

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 130001-EI
ORDER NO. PSC-13-0563-CFO-EI
ISSUED: October 30, 2013

ORDER GRANTING DUKE ENERGY FLORIDA, INC.'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF ITS FORM 423 REPORT (DOCUMENT NO. 06034-13)

On October 7, 2013, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, Inc. (DEF) requested confidential classification (Request) to portions of its Form 423 Fuel Report for June 2013 (Report), (Document No. 06034-13). This request was filed in Docket No. 130001-EI.

Section 366.093(1), F.S., provides that “any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act].” Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company’s ratepayers or business operations, and has not been voluntarily disclosed to the public. Paragraph (3)(d) of Section 366.093, F.S., provides that proprietary confidential business information includes, but is not limited to “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.”

DEF contends that designated portions of the information contained in the Report, as more specifically described in the Justification Matrix in Attachment A to its Request, fall within these categories and, thus, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF states that Attachment A to the Request provides support for confidential classification of the highlighted information in each section of the 423 Report (Forms 423-1A, 2, 2A, and 2B) on a line-by-line, column-by-column basis. DEF states that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

Time Period For Confidential Classification

DEF requests confidential classification for this information for a period exceeding 18 months. According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless “the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.” DEF requests that the information be treated as confidential for a period of twenty-four months.

In support of its request for extended confidential treatment, DEF asserts that the information in Document No. 06034-13 is comprised of the fuel and transportation contracts from which the costs in the 423 Report are derived and which contain annual price adjustment provisions. DEF asserts that if existing or potential fuel and transportation suppliers were to obtain confidential contract pricing information for a prior reporting month within the currently effective 12-month adjustment period, current pricing information would be disclosed. In addition, DEF states that if contractual pricing information for a reporting month in the previous 12-month adjustment period were to be obtained, the information would be only one adjustment removed from the current price. DEF states that suppliers knowledgeable in the recent escalation experience of their market could readily calculate a reasonably precise estimate of the current price.

To guard against providing suppliers with such a competitive advantage, DEF states, confidential information must be protected from disclosure for the initial 12-month period in which it could remain current, and for the following 12-month period in which it can be readily converted into essentially current information. As an example, DEF explains, if information for the first month under an adjusted contract price is reported in May of Year 1, the information will remain current through April of Year 2 and that thereafter, the initial May, Year 1 information will be only one escalation adjustment removed from the current information reported each month through April, Year 3. If confidential classification of the May, Year 1 information were to expire after 18 months, DEF contends, suppliers would be able to accurately estimate current prices in October, Year 2 using information that had been current only six months earlier.

DEF further states that an 18-month confidentiality period would effectively waste the protection given in the first six months of the second 12-month pricing period (months 13 through 18) by disclosing information of the same vintage in the last six months of the pricing period. DEF states that the information disclosed in months 19 through 24 would be equally as detrimental in terms of revealing the current price as the information protected from disclosure during the preceding six months. To make the protection provided in months 13 through 18 meaningful, DEF argues, it must be extended through month 24. DEF further argues that extending the confidentiality period by six months would mean that the information will be one additional price adjustment further removed from the current price at the time of disclosure.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.” Thus, the information identified in Document No. 06034-13 shall be granted confidential classification.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed

18 months, absent good cause shown. DEF has shown good cause to extend the period of confidentiality to 24 months. Accordingly, the information identified in Document No. 06034-13 shall be granted confidential classification for a period of 24 months from the issuance of this Order. At the conclusion of the 24-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E Balbis, as Prehearing Officer, that Duke Energy Florida, Inc.'s Request for Confidential Classification of Document No. 06034-13 is granted. It is further

ORDERED that the information in Document No. 06034-13, for which confidential classification has been granted, shall remain protected from disclosure for a period of twenty-four months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 30th day of October, 2013.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.